

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-10991-NG

KENNETH M. WHITE and)
MANDY DIAS)
)
Plaintiff)
)
vs.)
)
ERIC MADONNA and CITY OF)
FALL RIVER,)
)
Defendants)

**PLAINTIFFS MOTION IN LIMINE TO PRECLUDE EVIDENCE
OF DEFENDANT ERIC MADONNA'S SERVICE IN THE UNITED STATES
MILITARY FORCES AND HIS TOUR OF DUTY IN IRAQ**

Plaintiffs Kenneth M. White and Mandy Dias move *in limine* to preclude Defendants from offering real evidence and/or testimony with respect to, or otherwise referring to (in their opening, closing, or otherwise in the jury's presence) Defendant Eric Madonna's service in the United States Armed Forces, as well as Madonna's military tour of duty in Iraq.

Madonna is a member of the Massachusetts National Guard and a reserve Sergeant in the United States Army. The ordinary pre-trial procedure in this case was interrupted for 545 days because of Defendant Eric Madonna's deployment for a term on duty in the U.S. armed forces in Iraq. (Exh. 1) On information and belief, Madonna also served a tour of duty in Iraq at some time previous to the incident at issue in this lawsuit.

Any evidence concerning Madonna's military status, and/or his tour of duty in Iraq, has no tendency to prove or disprove any particular fact in this case, and is therefore not a

material trial issue. See Liacos, Handbook of Massachusetts Evidence § 4.1.1, at 106 (8th ed. 2007). Evidence must be relevant in order to be admissible. Green v. Richmond, 369 Mass. 47, 59 (1975).

Further, in the current political climate throughout the United States, the war in Iraq and the broader "war of terror" are topics of debate, controversy, and strong feelings. However, support for the United States military personnel in the field and at risk of harm is unquestioned. The admission of evidence concerning Madonna's military status, in addition to its lack of probative value, may have a tendency to prejudice the jury unfairly and to confuse the issue at hand. See Commonwealth v. Bonds, 445 Mass. 821, 831 (2006).

For these reasons, Plaintiffs request that the motion *in limine* to preclude evidence of Defendant Madonna's service in the United States Armed Forces, as well as Madonna's military tour of duty in Iraq be ALLOWED.

Plaintiff Kenneth M. White,
By His Attorneys,

BEAUREGARD, BURKE & FRANCO

/s/ James Hodgson
PHILIP N. BEAUREGARD BBO#034780
JAMES HODGSON BBO#656231
P.O. Box 952
New Bedford, MA 02741-0952
(508) 993-0333

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